

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 STATE FARM FIRE AND CASUALTY
11 COMPANY, as subrogee for Richard Von
12 Kleinsmid and Carol Zabilski,

13 Plaintiff,

14 v.

15 BURNHAM HOLDINGS, INC. d/b/a
16 THERMO PRODUCTS, LLC d/b/a
17 THERMO PRIDE,

18 Defendant.

Case No.

**NOTICE OF REMOVAL TO
FEDERAL COURT**

19 Defendant Burnham Holdings, Inc., d/b/a Thermo Products, LLC d/b/a Thermo Pride
20 (“Defendant”), by and through its attorneys, hereby removes the above-captioned action,
21 currently commenced in the Superior Court of King County, Washington, to the United States
22 District Court for the Western District of Washington. Removal is based on 28 U.S.C. § 1332
23 (diversity jurisdiction) and authorized by 28 U.S.C. §§ 1441 and 1446. As grounds for
24 removal, Defendant states as follows:

BACKGROUND

25 1. Plaintiff State Farm Fire and Casualty Company, as subrogee for Richard Von
26 Kleinsmid and Carol Zabilski (“Plaintiff”) commenced this action on December 3, 2012, by
27 serving a summons and complaint on Defendant’s authorized agent for service of process (the
“State Court Action”). Declaration of David R. Voyles (“Voyles Decl.”) at ¶ 2, Ex. A
NOTICE OF REMOVAL - 1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

(Summons), Ex. B (Complaint), Ex. C (Notice of Service of Process). The State Court Action has not been filed with the King County Superior Court, and thus has not been assigned a case number. *Id.*

2. Prior to commencement of the lawsuit, Plaintiff wrote to Defendant's insurance carrier and demanded full reimbursement of the alleged damages, which amount to \$154,926.76 Voyles Decl. at ¶ 3, Ex. D (Demand Letter of State Farm to Defendant's Insurer).

STATUTORY REQUIREMENTS FOR REMOVAL ARE PRESENT

3. Federal district "have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332(a). Here, diversity jurisdiction under 28 U.S.C. § 1332(a)(1) exists because this action is between citizens of different states and the amount in controversy exceeds \$75,000.

4. Complete diversity exists, as Plaintiff and Defendant are citizens of different states.

a. Plaintiff is a corporation with a principal place of business in Illinois, and Plaintiff's insureds are citizens of the State of Washington. *See* Voyles Decl., ¶ 4; *see id.*, Ex B (Compl. at 1).

b. Defendant Burnham Holdings, Inc. is a citizen of the state of Delaware, with a principal place of business in Pennsylvania. Voyles Decl. at ¶ 5. Thermo Products, LLC, is a Delaware LLC, with principal places of business in Indiana and North Carolina. *Id.* "Thermo Pride" is not an entity, but rather a trade-name used by Thermo Products, LLC.

5. The amount in controversy exceeds \$75,000 because Plaintiff seeks, exclusive of interest and costs, reimbursement of \$153,926.76. Voyles Decl. at ¶ 3, Ex D.

PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET

6. Removal to this Court Is Proper. Pursuant to 28 U.S.C. §§ 1441(a)-(b) and 1446(a), Defendant files this Notice of Removal in the United States District Court for the

1 Western District of Washington, which is the federal district court embracing the state court
 2 where Plaintiff has commenced the State Court Action — in King County, Washington. Venue
 3 is proper in this district pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 128(b). While
 4 Plaintiff has not filed this case with the Superior Court of King County, a case is commenced in
 5 Washington by earlier of either serving or filing a summons and complaint. *See* C.R. 3(a)
 6 (“[A] civil action is commenced by service of a copy of a summons together with a copy of the
 7 complaint . . . or by filing a complaint.”).

8 7. Removal Is Timely. “The notice of removal of a civil action or proceeding shall
 9 be filed within 30 days after the receipt by the defendant . . . of a copy of the initial
 10 pleading . . .” 28 U.S.C. § 1446(b)(1). Where a Plaintiff has served a Defendant with a copy of
 11 the summons and complaint but has not filed them, the 30-day removal timeline nonetheless
 12 commences from the date of service of both the summons and complaint. *Murphy Bros., Inc. v.*
 13 *Maced. Pipe Stringing, Inc.*, 526 U.S. 344, 354, 119 S.Ct. 1322, 143 L.Ed.2d 448 (1999). In
 14 the Western District of Washington, there is no requirement that the case actually be filed in
 15 state court before commencing removal. *Pacuska v. Allied Van Lines, Inc.*, 2006 WL 521596,
 16 *4 (W.D. Wash., Mar. 2, 2006) (unreported) (remanding a case which had been removed after
 17 30 days had passed from the date of service of the summons and complaint, but within 30-days
 18 of the filing of the summons and complaint, and noting, “There is nothing in the removal
 19 statute that requires a state court filing as a prerequisite to filing a notice of removal”). Here,
 20 the Summons and Complaint were first served on Defendant on December 3, 2012. As such,
 21 this removal is timely. *See* 28 U.S.C. § 1446(b).

22 8. Bond and Verification. Pursuant to Section 1016 of the Judicial Improvements
 23 and Access to Justice Act of 1988, no bond is required in connection with this Notice of
 24 Removal. Pursuant to Section 1016 of the Act, this Notice need not be verified.

25 9. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See*
 26 28 U.S.C. § 1446(a).

10. Pleadings and Process. True and correct copies of the pleadings served upon the Defendant commencing the State Court Action are attached as Exhibit E to Voyles Decl. As of the date of this Notice of Removal, there is no case on file with the King County Superior Court. *See* 28 U.S.C. § 1446(a). Defendant has made a demand upon Plaintiff that it file the State Court Action; once filed Defendant will file with the King County Superior Court a Notice to Clerk of Notice of Removal to Federal Court. *See* Voyles Decl., ¶ 7, Ex. E. Defendant has paid the appropriate filing fee to the Clerk of this Court upon the filing of this Notice.

11. Notice. Defendant will promptly serve Plaintiff and file with this Court its Notice of Removal to All Adverse Parties, informing Plaintiff that this matter has been removed to federal court. *See* 28 U.S.C. §§ 1446(a), (d). Defendant will also promptly send to the Clerk of the Superior Court of Washington, County of King, and serve on Plaintiff, a Notice to Clerk of Removal to Federal Court, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, this action should proceed in the United States District Court for the Western District of Washington, as an action properly removed thereto.

Dated this 28th day of December, 2012.

LANE POWELL PC

By s/Mark G. Beard
Mark G. Beard, WSBA No. 11737
beardm@lanepowell.com

By s/David R. Voyles
David R. Voyles, WSBA No. 40536
voylesd@lanepowell.com
Attorneys for Defendant Burnham Holdings, Inc.
d/b/a Thermo Products, Llc D/b/a Thermo Pride

CERTIFICATE OF SERVICE

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 28th day of December, 2012, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Craig Evezich, Esq.
Evezich Law Offices, PLLC
175 NE Gilman Boulevard
Issaquah, WA 98027-2955

Executed on the 28th day of December, 2012, at Seattle, Washington.

s/David R. Voyles

Signature of Attorney

WSBA No. 40536

Typed Name: David R. Voyles

Address: 1420 Fifth Avenue, Suite 4100
Seattle, WA 98101-2338

Telephone: 206.223.7000

Fax: 206.223.7107

E-mail: voylesd@lanepowell.com

Attorney(s) For: Defendant Burnham
Holdings, Inc. D/b/a Thermo Products, Llc
D/b/a Thermo Pride

NOTICE OF REMOVAL - 5

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107